73-1042

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1973.

NO. A-452

ARTHUR A. LAMBERT,
Petitioner,

v.

MURIEL CLARK, Deputy Clerk, PAULINE C. BERRY, Clerk, and LINCOLN SPENCER, Judge, all of the Superior Court of York County,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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Luttrell v. Douglas, (1963)
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Robichaud v. Ronan, (9th Cir. 1965) 351 F2d 533, 537, 538 11

Spires v. Bottorff, (7th Cir. 1963) 317 F2d 273 11

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit entered August 17, 1973.

OPINIONS BELOW

There was no formal opinion of the District Court. Excerpt of pp13, and 14 of the transcript in that Court, including judge's statement granting motion to dismiss complaint, and action is printed in Appendix A hereto, and ORDER DISMISSING ACTION with prejudice, which was in effect a summary judgment,is reproduced in Appendix B hereto.

No opinion was rendered by the Court of Appeals; MEMORANDUM AND ORDER dismissing appeal is printed in Appendix C hereto.

JURISDICTION

The judgment of the Court of Appeals (Appendix C, infra), was entered August 17, 1973. On November 7, 1973, Mr. Justice William J. Brennan, Jr., signed an order extending time for filing this petition to an including January 2, 1974. The jurisdiction of the Court is invoked under provisions of 28 U.S.C. §1254(1)

QUESTIONS PRESENTED FOR REVIEW

1. Where person whose property is being plundered and destroyed by repairman claiming exorbitant charges, and threatening exorbitant future storage charges against said property applies to county court clerk for certain blank forms which are pre-requisite, and indispensable to gain access to, and effectuate the processes of, said county court in effort to recover his property, and is denied such blank forms, in turn, by the Deputy Clerk, Clerk, and Clerk and Judge under color of law that such blank forms are available to attorneys only:

a) Can the Deputy Clerk claim judicial immunity in civil rights action pursuant to 42 U.S.C. §1983?

b) Can the Clerk and Deputy Clerk who conspire to effect such denial of said blank forms claim judicial immunity in claim pursuant to 42 U.S.C. §1985?

c) Can county Judge who is approached by

said clerks in the corridors, and ante-rooms of the courthouse, and, who, then and there, having been persuaded by said clerks, does join, and does give support to said conspiracy claim judicial immunity in a civil rights action pursuant 42 U.S.C. §1985?

d) Can county judge who is apprised by said clerks that a conspiracy is afoot to deny equal protection of the law, and who is charged instanter with the inflexible, and uncompromising duty to prevent, or aid to prevent such conspiracy claim judicial immunity in a civil rights action pursuant 42 U.S.C. §1986?

2. Can the Court convert a motion to dismiss into a motion for summary judgment without giving notice to plaintiff of the changed status of the motion so as to give reasonable opportunity to present all material made pertinent to such a motion by Rule 56 of F.R.Civ.P.?

3. Can such a conversion operate to foreclose plaintiff's right to trial by jury?

4. Can the Court make, and act on such

conversion when there are triable issues of fact?

5. Can the trial court base such conversion on the total and complete perversion of facts and law by defendants' attorney at the hearing on motion to dismiss?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. Constitutional of Maine, Article I, §§6-A, 19, and 20. Infra D-1, and D-2.

2. Constitution of the United States, Amendments VII, and XIV, § 1. Infra, pp D-2, and D-3

3. Sections 1983, 1985, and 1986 of Title 42 of United States Code.

4. Maine Revised Statutes Annotated, Title 14, §551, West Publishing Co. Infra, p. D-6

STATEMENT OF THE CASE

On January 15. 1973, the petitioner intending to replevy his auto from a garageman who was destroying, and plundering said auto, and

had exorbitant charges, and was threatening more exorbitant charges for storage in future, also to bring fraud action against said garageman, petitioner applied to the Deputy Clerk of York County Superior Court, Alfred, Maine, and in turn to the Clerk, and Clerk and Judge for blank forms of writ of Replevin and Bond, and blank summons which bond petitioner intended to have filled-out, and signed by his surety so as to present to the Court for approval, and the same with the blank summons, to have stamped by the clerk and given to the officer for service. Said blank forms being obviously pre-required to gaining access to court. That the petitioner was denied said blank forms, in turn, by the Deputy Clerk, Clerk, and Clerk and Judge on the basis that petitioner was not an attorney, although petitioner apprised each in turn that he was acting in pro se to recover his property.

On March 5, 1973, plaintiff (petitioner),

filed civil rights complaint in three counts: 42 U.S.C. §§1983, 1985, and 1986 in the United States District Court, District of Maine, Portland, Maine, which Court had jurisdiction under 28 U.S.C. §§1331, and 1343, and complaint included demand for jury trial.

On March 22, 1973, defendants each filed an identical motion to dismiss the complaint, which motions failed to particularize, and left plaintiff to guess upon which grounds said motions were based. Merely pieces of paper that raised no issue.

On April 9, 1973, three days before noticed hearing thereon, plaintiff filed, and served STATEMENT IN OPPOSITION to said motions, pointing out the vagueness of said motions.

On April 12, 1973, hearing was had before Hon. Edward T. Gignoux, United States District Judge. At said hearing, although nothing was mentioned about conversion, said motions were converted into motions for summary judgment

with the plaintiff having no knowledge whatsoever of such conversion taking place. Please see Appendix B, infra, ORDER DISMISSING ACTION with prejudice. The only matter outside of the pleadings that was offered in support of said motions to dismiss was a recital by defendants' attorney, Roland A. Cole, York County Attorney, at the invitation of the Court, which recital was a total and complete perversion of facts, and state law. Please see transcript of hearing, pp. 4 to 8, inclusive, Maine Revised Statute Annotated, Title 14, §551, printed infra, D-6, and Appendix A, infra.

On May 2, 1973, Plaintiff filed NOTICE OF APPEAL in United States District Court, District of Maine, Southern Division, pursuant to Rule 4 of the Rules of Appellate Procedure thereby invoking the appellate jurisdiction of the United States Court of Appeals for the First Circuit as of right. Said Circuit Court dismissed Appellant-Plaintiff's (Petitioner), Appeal, and en-

tered MEMORANDUM AND ORDER dismissing on August 17, 1973. Please see Appendix C, infra.

REASONS FOR GRANTING THE WRIT

The Court of Appeals' approval of the District Court's dismissing action with prejudice devitalizes Amendment XIV, and the Civil Rights Act, 42 U.S.C. §1983, 1985, and 1986, and is in sharp conflict with this Court's decisions. Access to the courts of any of the states is the conservative right of all the other rights. Chambers v. Baltimore, etc., R. Co. (1907) 28 S. Ct. 34, 207 U.S. 142, and reiterated by Mr. Justice Black, in the Orders of October Term, 1970, 402 U.S. at page 954. Bradley v. Fisher, 13 Wall (80 U.S.) 335, 352, "when the want of jurisdiction is known to the judge, no excuse is permissible." In Exparte Virginia, 100 U. S. 339, 348, 25 L.Ed 676 (1879), "Whether the act done by him was judicial or not is to be determined by it character, and not by the character of the agent. Whether he was a county

judge or not is of no importance, The duty of selecting jurors might as well have been committed to a private person as to one holding the office of judge." The Court of Appeals is in conflict with decisions of the various circuits. Manning v. Ketcham 58 F.2d 948, 949 (6 Cir.), where a judge was on the bench was liable for conducting an inquisition of a person called by him to take the stand. In Luttrell v. Douglas, 220 F. Supp 278 (1963), Judge ordered $675 deducted from already-posted bail of $3,000 to pay already-appointed public defender who by law could not accept pay. The Court said: "Such illegal conduct can hardly be described as judicial function. Judicial officers may not escape liability for the commission of illegal acts merely by committing them in the courthouse." In Wade v. Bethesda Hospital, 337 F. Supp. 671 (1971), where judge ordered plaintiff to submit to sterilization, he was acting wholly without jurisdiction in

in the matter. The following cases have held likewise, Robichaud v. Ronan 351 F. 2d 533, 537, 538, (9th Cir. 1965), Spires v. Bottorff, 317 F.2d 273 (7th Cir. 1963), Bauers v. Heisel, 361 F.2d 581, 590,591 (3rd Cir. 1966), Lynch v. Johnson, 420 F.2d 818, 820 (6th Cir. 1970), McCray v. Maryland, 456 F.2d 1, 3, 4, (4th Cir. 1972), Delatte v. Genovese, 273 F. Supp. 654, 657, 658.

The Court of Appeals sanctioning the manner in which this petitioner's case was handled in the lower court, that is,the wide departure from the accepted and usual course of judicial proceedings by the District Court, calls for this Court's power of supervision. When the District Court converted the motion to dismiss into a motion for summary judgment without giving notice of such conversion it violated plaintiff's procedural rights, and denied him trial by jury. Costen v. Paulin's Sportwear, Inc.,(C.A. 9th, 1968) 391 F.2d 81, Erlich v. Glasner, (C.A. 9th

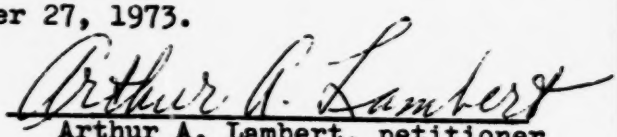
1967) 374 F.2d 681, Georgia S. & F. Ry Co. v. Attlantic Coast Line R.R. Co. (C.A. 5th, 1967) 373 F.2d 493, certiorari denied 88 S.Ct. 69, 389 U.S. 851, 19 L.Ed. 2d 120.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

Dated: December 27, 1973.



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Appendix A

EXCERPT OF TRANSCRIPT OF HEARING (pp. 13, and 14, beginning on line 23, page 13)

THE COURT: Well, Gentlemen, quite clearly the defendants are immune from suit of this nature, as the First Circuit has held and a long line of authorities, both previous and since the holding of the First Circuit in Sullivan v. Kelleher. The defendants' motions to dismiss are granted. The action is dismissed. The Court will prepare a brief order which will be filed this afternoon to that effect.

It further appears clearly from what has developed at this hearing that even if the defense of immunity were not available to the defendants, in fact the plaintiff did not follow the perfectly reasonable procedure provided by the Revised Maine Civil Rules which would not have permitted him to obtain the documents which he was seeking and for the denial of which he seeks damage in this action.

Appendix B

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE
SOUTHERN DIVISION

ARTHUR A. LAMBERT, Plaintiff	:	
v.	:	CIVIL NO. 14-16
MURIEL CLARKE, ET AL., Defendants	:	

ORDER DISMISSING ACTION

Hearing having been had this date upon defendants' motions to dismiss the complaint in the above entitled action; and plaintiff having appeared pro se; and defendants having appeared by their counsel, Roland A. Cole, Esquire, and the Court having considered the written and oral arguments of plaintiff and defendants' counsel; for the reasons stated by the Court on the record at said hearing, it is

ORDERED that defendants' motions to dismiss the complaint are GRANTED and the action is DISMISSED with prejudice. Sullivan v. Kelleher, 405 F.2d 486 (1st Cir. 1968) (and cases there cited)

Dated at Portland, Maine, this 12th day of April 1973.

/s/ Edward T. Gignoux
United States District Judge

Appendix C

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 73-1143

ARTHUR A. LAMBERT,
Plaintiff, Appellant

v.

MURIEL CLARK ET AL.,
Defendants, Appellees.

Before COFFIN, Chief Judge,
McENTEE and CAMPBELL, Circuit Judges.

MEMORANDUM AND ORDER

Entered: August 17, 1973

We have examined the briefs of the parties and the record. The issues raised on appeal from the order of the district court are patently without merit. Pursuant to our local Rule 12, the appeal is hereby dismissed.

By the Court:

/s/ Dana H. Gallup

Clerk.

Appendix D

Constitution of Maine, Article I,

§6-A Discrimination prohibited

No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of his civil rights or be discriminated against in the exercise thereof.

§19 Right of redress for injuries

Every person, for an injury done him in his person, reputation, property or immunities, shall have remedy by due course of law; and right and justice shall be administered freely and without sale, completely and without denial, promptly and without delay.

§20 Trial by jury

In all civil suits, and in all controversies concerning property, the parties shall have a right to trial by jury, except in cases

where it has heretofore been otherwise practiced: the party claiming the right may be heard by himself and his counsel, or either at his election.

Constitution of the United States:

Amendment VII Trial by jury

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Amendment XIV, §1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of

citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. §1983 Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen if the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, or suit in equity, or other proper proceeding for redress.

42 U.S.C. §1985 (3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either

directly or indirectly, any person or class of persons of the equal protection of the laws; or for the purpose of preventing or hindering the constituted authority of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws:...in any case of conspiracy set forth in this section, if one or more persons engaged therein do,or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

42 U.S.C. §1986 Every person who, having knowledge that any of the wrongs conspired to

be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such peeson by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there is no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of

this section shall be sustained which is not commenced within one year after the cause of action has accrued.

Maine Revised Statutes Annotated, Title 14,

§551. Clerks of judicial courts, judges and registers of the probate courts, Judges and clerks of the District Court shall not sell or deliver any blank writs or precepts bearing the seal of said courts and the signature of said judges and registers to any person, except one who has been admitted as an attorney and counselor at law and solicitor and counselor in chancery in accordance with the laws of this State. Said judges and registers of said probate courts shall not receive any paper, petition or other instrument peetaining to the practice of law before said probate courts unless it bears the indorsement of an attorney or counselor at law duly authorized to practice before said courts. The above provisions shall not apply to a party in interest in the subject matter in said courts.